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Moonbug Entertainment Limited and
Treasure Studio, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MOONBUG ENTERTAINMENT
LIMITED and TREASURE STUDIO, INC.,

Plaintiffs,

v.

BABYBUS (FUJIAN) NETWORK
TECHNOLOGY CO., LTD,

Defendant.

BABYBUS (FUJIAN) NETWORK
TECHNOLOGY CO., LTD,

Counter-Plaintiff,

v.

MOONBUG ENTERTAINMENT
LIMITED and TREASURE STUDIO, INC.,

Counter-Defendants.

Case No: 3:21-cv-06536-EMC

**DECLARATION OF CIARA MCHALE
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

Date: October 7, 2021

Time: 1:30 p.m.

Judge: Hon. Edward M. Chen

Courtroom: 5, 17th Floor

Complaint Filed: August 24, 2021

1 I, Ciara McHale, do hereby declare as follows:

2 1. I am an attorney at law licensed to practice in the State of California and the
3 Northern District of California. I am an attorney at the law firm Tyz Law Group PC, attorneys of
4 record for Plaintiffs Moonbug Entertainment Limited and Treasure Studio, Inc. (together,
5 “Moonbug”), in the above captioned matter. I have personal knowledge of the matters set forth in
6 this declaration and, if called to testify as a witness, would be competent to testify as follows.

7 2. Plaintiffs retained Tyz Law Group in this matter on May 13, 2021.

8 **Defendant’s Copying of CoComelon**

9 3. Attached as **Exhibit 1** is a true and correct screenshot of the “About CoComelon”
10 page on Plaintiffs’ CoComelon website, available at <https://cocomelon.com/pages/about>. The
11 page introduces the CoComelon characters, including the baby, JJ, Mom, Dad, big sister YoYo,
12 big brother TomTom, and the family dog, Bingo.

13 4. Attached as **Exhibit 2** is a true and correct screenshot of a YouTube page for
14 Defendant’s Super JoJo video, “The Boo Boo Song | Baby Gets a Boo Boo | Super JoJo Nursery
15 Rhymes & Kids Songs” that I captured on June 14, 2021. The page shows that the video was
16 posted on July 9, 2019 and, as of the date of capture, had over 136 million views.

17 5. Attached as **Exhibit 3** is a true and correct screenshot of another YouTube page for
18 Defendant’s Super JoJo video, “The Boo Boo Song | Baby Gets a Boo Boo | Super JoJo Nursery
19 Rhymes & Kids Songs” that I captured on June 14, 2021. The page shows that the video was
20 posted on August 11, 2019 and, as of the date of capture, had over 201 million views.

21 6. Attached as **Exhibit 4** is a true and correct screenshot of the YouTube page for
22 Defendant’s Super JoJo video, “Yes Yes Vegetables Song | Super JoJo Nursery Rhymes & Kids
23 Songs” that I captured on June 14, 2021. The page shows that the video was posted on August 6,
24 2019 and, as of the date of capture, had over 108 million views.

25 7. Attached as **Exhibit 5** is a true and correct screenshot of a YouTube page for
26 Defendant’s Super JoJo video, “Bath Song | Baby Shark | Super JoJo Nursery Rhymes & Kids
27 Songs” that I captured on June 15, 2021. The page shows that the video was uploaded on June 21,
28 2019 and, as of the date of capture, had over 60 million views.

1 8. Attached as **Exhibit 6** is a true and correct screenshot of the Video section of
2 Defendant's "Super Jojo Nursery Rhymes" Facebook page that I captured on September 28, 2021.
3 I reviewed the videos on the Facebook page that day and saw that, as of the date of capture,
4 Defendant was still distributing its versions of "The Boo Boo Song," "Bath Song," "Yes Yes
5 Vegetables," and "Car Wash Song" there.

6 9. Attached as **Exhibit 7** is a true and correct screenshot from Plaintiffs' CoComelon
7 video, "Swimming Song + More Nursery Rhymes & Kids Songs – CoComelon" that I captured
8 from YouTube on September 30, 2021, with personal account and browser information redacted.

9 10. Attached as **Exhibit 8** is a true and correct screenshot from Defendant's Super JoJo
10 video, "Swimming Song + More Nursery Rhymes & Kids Songs" that I captured from Defendant's
11 Facebook page on September 30, 2021, with personal account and browser information redacted.

12 11. Attached as **Exhibit 9** are true and correct copies of the "About" and "Videos"
13 pages of Defendant's "JoJo English – Family Playroom" YouTube channel.

14 12. Attached as **Exhibit 10** are true and correct copies of screenshots of comments I
15 obtained from Reddit and Twitter describing Super JoJo as similar to and a "rip off" of
16 CoComelon.

17 **YouTube's Policies and Procedures**

18 13. Attached as **Exhibit 11** is a true and correct copy of YouTube's Terms of Service.

19 14. Attached as **Exhibit 12** is a true and correct copy of YouTube's "Copyright strike
20 basics" page located in the YouTube Help Center.

21 15. Attached as **Exhibit 13** is a true and correct copy of the "Enforcing copyright" page
22 located in the section of YouTube's Copyright Rules and Policies called "How YouTube Works."

23 16. Attached as **Exhibit 14** is a true and correct copy of the "Content Manager policies"
24 page located in the YouTube Help Center.

25 17. Attached as **Exhibit 15** is a true and correct copy of the "Contact information in
26 copyright takedown requests" page located in the YouTube Help Center.

1 **Moonbug's YouTube Copyright Notices and Defendant's Response**

2 18. On July 20, 2021, I began submitting copyright infringement notifications (*i.e.*,
3 DMCA takedown notices) to YouTube on behalf of Moonbug Entertainment Limited regarding
4 Defendant's infringing Super JoJo videos and channels. Attached as **Exhibit 16** is a true and
5 correct copy of a screenshot of YouTube's copyright takedown request web form that I captured
6 on October 3, 2021. I submitted each of the takedown notices I describe below through the
7 webform shown in this exhibit.

8 19. On July 20, 2021, my colleague also sent a letter sent YouTube a 17-page letter and
9 80 pages of exhibits regarding Moonbug's allegations of Defendant's infringement. A copy of
10 this letter and exhibits was also sent by email to Defendant. **Exhibit 17** is a true and correct copy
11 of the July 20, 2021 letter to Defendant attaching the letter and exhibits to YouTube.

12 20. On July 30, 2021 YouTube removed two of Defendant's videos from YouTube in
13 response to takedown notifications I submitted on July 28, 2021: (1) "Johny Johny Yes Papa |
14 Super JoJo Nursery Rhymes & Kids Songs" and (2) "Doctor Checkup Song | Super JoJo Nursery
15 Rhymes & Kids Songs".

16 21. On August 6, 2021, YouTube removed two more of Defendant's videos from
17 YouTube in response to takedown notifications I submitted on July 29, 2021: (1) "Clean Up Song
18 | Tidy Up Song | Super JoJo Nursery Rhymes & Kids Songs" and "Farm Animals Song | Animal
19 Sounds Song | Super JoJo Nursery Rhymes & Kids Songs."

20 22. On August 11, 2021, I received confirmation from YouTube that Defendant had
21 submitted counter-notifications in response to YouTube's removal of the videos identified in
22 Paragraphs 20 and 21.

23 23. Below I describe and attach five specific takedown notices I submitted to YouTube
24 on behalf of Plaintiff Moonbug Entertainment Limited over the course of July 28, July 29, and
25 August 2, 2021. Each of these notifications were for videos on Defendant's YouTube channel,
26 "Super JoJo – Nursery Rhymes," located at [https://www.youtube.com/channel/UCHN9P-](https://www.youtube.com/channel/UCHN9P-CQVBQ1ba8o1NQJVCA)
27 [CQVBQ1ba8o1NQJVCA](https://www.youtube.com/channel/UCHN9P-CQVBQ1ba8o1NQJVCA) (the "Super JoJo English Channel"). The videos that are the subject of
28

1 these five takedown notices are referred to in Plaintiff's Opposition as the "**Strike Videos**" for
2 reasons I explain further below. I refer to them collectively as the Strike Videos here as well.

3 a. On July 29, I submitted a copyright infringement notification to YouTube for
4 Defendant's video entitled "Rain Rain Go Away | Swimming Song + More
5 Nursery Rhymes & Kids Songs - Super JoJo," previously available at
6 <https://www.youtube.com/watch?v=1fqW56HR4II> before YouTube terminated
7 the "Super JoJo – Nursery Rhymes" YouTube channel. Attached as **Exhibit 18**
8 is a true and correct copy of an email I received from YouTube on July 29, 2021
9 with the subject line "YouTube Copyright Complaint Submission," confirming
10 my submission of the takedown request for this video and showing the
11 information I provided in the submitted takedown request.

12 b. On July 30, 2021, I submitted a copyright infringement notification to YouTube
13 for Defendant's video entitled "The Finger Family Song | Nursery Rhymes &
14 Kids Songs by Super JoJo," previously available on YouTube at
15 <https://www.youtube.com/watch?v=VsTKklOCzUE>. Attached as **Exhibit 19** is
16 a true and correct copy of an email I received from YouTube on July 30, 2021
17 with the subject line "YouTube Copyright Complaint Submission," confirming
18 my submission of the takedown request for this video and showing the
19 information I provided in the submitted takedown request.

20 c. On July 30, 2021, I submitted a copyright infringement notification to YouTube
21 for Defendant's video entitled "Yes Yes Clean Up Song | Tidy Up Song + More
22 Nursery Rhymes & Kids Songs - Super JoJo," previously available on YouTube
23 at <https://www.youtube.com/watch?v=j4vgLR0gqNw> before YouTube's
24 termination of the "Super JoJo – Nursery Rhymes" YouTube channel. Attached
25 as **Exhibit 20** is a true and correct copy of an email I received from YouTube on
26 July 30, 2021 with the subject line "YouTube Copyright Complaint
27 Submission," confirming my submission of the takedown request for this video
28 and showing the information I provided in the submitted takedown request.

- 1 d. On July 30, 2021, I submitted a copyright infringement notification to YouTube
2 for Defendant's video entitled "The Color Song | Learn Colors For Kids + More
3 Nursery Rhymes & Kids Songs - Super JoJo," previously available on YouTube
4 at <https://www.youtube.com/watch?v=aIyuh90XFSE> before YouTube's
5 termination of the "Super JoJo – Nursery Rhymes" YouTube channel. Attached
6 as **Exhibit 21** is a true and correct copy of an email I received from YouTube on
7 July 30, 2021 with the subject line "YouTube Copyright Complaint
8 Submission," confirming my submission of the takedown request for this video
9 and showing the information I provided in the submitted takedown request.
- 10 e. On August 2, 2021, I submitted a copyright infringement notification to
11 YouTube for Defendant's video entitled "Wash Your Hands Song | Healthy
12 Habits For Kids + More Nursery Rhymes & Kids Songs - Super JoJo,"
13 previously available on YouTube at
14 <https://www.youtube.com/watch?app=desktop&v=yQWMdFXEzLQ> before
15 YouTube's termination of the "Super JoJo – Nursery Rhymes" YouTube
16 channel. Attached as **Exhibit 22** is a true and correct copy of an email I received
17 from YouTube on August 2, 2021 with the subject line "YouTube Copyright
18 Complaint Submission," confirming my submission of the takedown request for
19 this video and showing the information I provided in the submitted takedown
20 request.

21 To my knowledge, Defendant submitted no counter notification(s) in response to the takedown
22 notices for the videos identified in this paragraph until over a month later, September 13, 2021.

23 24. Further, to my knowledge, Defendant submitted no counter notifications to
24 YouTube between August 12, 2021 and September 13, 2021 in response to any takedown
25 notifications I had submitted to YouTube.

26 ///

27 ///

28 ///

1 **YouTube's Termination of Defendant's Super JoJo English Channel**

2 25. Attached as **Exhibits 23–27** are true and correct copies of emails I received from
3 YouTube on August 11, 2021, stating that YouTube had removed the five videos described above
4 in Paragraph 23 (the Strike Videos) from YouTube.

5 26. On August 25, 2021, I provided notice to YouTube of this lawsuit.

6 27. On August 26, 2021, I became aware that YouTube had terminated the Super JoJo
7 English Channel at some point on or before that day.

8 28. Based on my understanding of YouTube's three strikes policy, I suspect that
9 YouTube terminated the Super JoJo English Channel because the removals of the Strike Videos
10 on August 11, 2021 resulted in three or more strikes against the channel and because Defendant
11 failed to timely submit counter-notifications in response to those removals.

12 **Defendant's Counter Notifications Submitted After Termination of its Channel**

13 29. I understand that on or around August 31, 2021, my colleague, Jennifer Kelly was
14 first contacted by phone by Sam Stake, counsel for Defendant.

15 30. It is my understanding that Defendant's counsel first referenced seeking some form
16 of emergency relief from this Court at least as early as September 10, 2021 in an email to Plaintiffs'
17 counsel. **Exhibit 28** is a true and correct copy of that email, excerpted in relevant part and with
18 information regarding FTP credentials redacted.

19 31. On September 13, 2021, I received four emails from YouTube stating that
20 Defendant had submitted additional counter-notifications in response to takedown notifications I
21 had submitted in July and August 2021. **Exhibit 29** is a true and correct copy of the email form
22 YouTube providing notice of Defendant's counter notification regarding the Strike Videos.
23 Defendant submitted three other similar counter-notifications regarding several videos that
24 YouTube marked as removed after terminating the Super JoJo English channel. It is my
25 understanding that those removals also resulted in strikes against Defendant's YouTube account.

26 **Copies of Plaintiffs' and Defendant's Videos**

27 32. Attached as **Exhibits 30–39** are true and correct copies of certain of Plaintiffs' and
28 Defendant's respective videos. Concurrently with this declaration and exhibits, I have lodged

1 Exhibits 30–39 with the Court and served them on counsel for Defendant. I provide further
2 information about each exhibit here.

3 33. **Exhibit 30** is a true and correct copy of Plaintiffs’ CoComelon video, “The Boo
4 Boo Song | CoComelon Nursery Rhymes & Kids Songs,” that I created through accessing the
5 video on YouTube on June 14, 2021. The video is available on YouTube at
6 <https://www.youtube.com/watch?v=3YltYCrPZos>.

7 34. **Exhibit 31** is a true and correct copy of Defendant’s Super JoJo video, “The Boo
8 Boo Song | Baby Gets a Boo Boo | Super JoJo Nursery Rhymes & Kids Songs” that I created
9 through accessing the video on YouTube on June 14, 2021. The video was previously available
10 in several locations on YouTube, including at
11 <https://www.youtube.com/watch?v=JpaDYH36rRU>, before YouTube terminated the “Super JoJo
12 – Nursery Rhymes” YouTube channel. I discuss YouTube’s termination of the “Super JoJo –
13 Nursery Rhymes” channel further below.

14 35. **Exhibit 32** is a true and correct copy of Plaintiffs’ CoComelon video, “Yes Yes
15 Yes Yes Vegetables Song | CoComelon Nursery Rhymes & Kids Songs,” that I created through
16 accessing the video on YouTube on June 14, 2021. The video is available on YouTube at
17 <https://www.youtube.com/watch?v=ohHYABXMqUQ>.

18 36. **Exhibit 33** is a true and correct copy of Defendant’s Super JoJo video, “Yes Yes
19 Vegetables Song | Super JoJo Nursery Rhymes & Kids Songs,” that I created through accessing
20 the video on YouTube on June 14, 2021. The video was previously available at
21 <https://www.youtube.com/watch?v=Qw6PKaGbfqk>, before YouTube terminated the “Super JoJo
22 – Nursery Rhymes” YouTube channel.

23 37. **Exhibit 34** is a true and correct copy of Plaintiffs’ CoComelon video, “Finger
24 Family | CoComelon Nursery Rhymes & Kids Songs,” that I created through accessing the video
25 on YouTube on October 3, 2021. This video is available on YouTube at
26 <https://www.youtube.com/watch?v=kCka94jeGTk>.

27 38. **Exhibit 35** is a true and correct copy of Defendant’s Super JoJo video, “The Finger
28 Family Song | Nursery Rhymes & Kids Songs by Super JoJo,” that I created through accessing the

1 video on YouTube on July 30, 2021. This video was previously available on YouTube at
2 <https://www.youtube.com/watch?v=VsTKklOCzUE>, before YouTube terminated the “Super JoJo
3 – Nursery Rhymes” YouTube channel.

4 39. I have reviewed both Exhibit 34 and Exhibit 35, Plaintiffs’ and Defendant’s
5 respective versions of the “Finger Family” song. In both videos, the baby finds his brother building
6 and/or fixing a toy car, *compare* Exhibit 34 at 1:02–1:25 *with* Exhibit 35 at 1:18–1:48. In both
7 videos, the baby finds his sister making art, *compare* Exhibit 34 at 1:26 – 1:50 *with* Exhibit 35
8 1:49–2:18. At the end of both videos, the rest of the family goes to find the baby character and
9 dance with him while finishing the song.

10 40. **Exhibit 36** is a true and correct copy of Defendant’s Super JoJo video, “Rain Rain
11 Go Away | Swimming Song + More Nursery Rhymes & Kids Songs - Super JoJo,” that I created
12 through accessing the video on YouTube on July 29, 2021. This video was previously available
13 at <https://www.youtube.com/watch?v=1fqW56HR4II> before YouTube terminated the “Super JoJo
14 – Nursery Rhymes” YouTube channel.

15 41. **Exhibit 37** is a true and correct copy of Defendant’s Super JoJo video, “Yes Yes
16 Clean Up Song | Tidy Up Song + More Nursery Rhymes & Kids Songs - Super JoJo,” that I created
17 through accessing the video on YouTube on July 30, 2021. This video was previously available
18 on YouTube at <https://www.youtube.com/watch?v=j4vgLR0gqNw> before YouTube’s termination
19 of the “Super JoJo – Nursery Rhymes” YouTube channel.

20 42. **Exhibit 38** is a true and correct copy of Defendant’s Super JoJo video, “The Color
21 Song | Learn Colors For Kids + More Nursery Rhymes & Kids Songs - Super JoJo,” that I created
22 through accessing the video on YouTube on July 30, 2021. This video was previously available
23 on YouTube at <https://www.youtube.com/watch?v=aIyuh90XFSE> before YouTube’s termination
24 of the “Super JoJo – Nursery Rhymes” YouTube channel.

25 43. **Exhibit 39** is a true and correct copy of Defendant’s Super JoJo video, “Wash Your
26 Hands Song | Healthy Habits For Kids + More Nursery Rhymes & Kids Songs - Super JoJo,” that
27 I created through accessing the video on YouTube on August 2, 2021. This video was previously
28 available on YouTube at <https://www.youtube.com/watch?app=desktop&v=yQWMdFXEzLQ>

1 before YouTube’s termination of the “Super JoJo – Nursery Rhymes” YouTube channel. Based
2 on an incomplete and preliminary review of the videos that Defendant lodged with the Court as
3 Exhibits 1 through 171 to the Declaration of Sam Stake (Dkts. 24, 24-1), it is my understanding
4 that Exhibit 39 (“Wash Your Hands Song”) is among the 171 videos Defendant submitted.

5 I declare penalty of perjury that the foregoing is true and correct. Executed on October
6 4, 2021.

7 /s/ Ciara McHale
8 Ciara McHale
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